

ARIZONA vs. MONTANA.

RULINGS OF SECRETARY LAMAR.

When Townsite Claimants Fall to File a Protest Against the Issuance of a Mining Patent, They Virtually Waive All Claim to the Ground in Dispute.

The Supreme Court of Arizona has formulated an opinion in a case involving the validity of the Mountain Maid patent which seems to overturn the doctrine heretofore enunciated by the Supreme Court of Montana in the Butte Townsite cases vs. the Smoke House Lode patent. The decision is published in full in this number. The Courts of the two Territories both claim that their decisions are in accord with the decisions of the United States Supreme Court, so far as the opinions of that Court bear upon the matter in dispute, but the exact point at issue in these cases has not yet been decided by that tribunal. Secretary Lamar has, however, thrown the weight of his legal mind on the side of the Montana cases. After the Supreme Court of Montana had decided the Smoke House Lode cases against the Butte Townsite, the inhabitants of the Townsite made application to the Secretary to cause proceedings to be instituted in the name of the United States to have the mine patent vacated and annulled. In response to such application, Secretary Lamar made the following ruling in which he holds with the Montana Court, that when townsite claimants fail to file an adverse claim when application is made for a mineral patent, they waive all claim thereto, and that the mineral patent when issued is conclusive of all antecedent facts necessary to support it:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., June 5, 1886.

Hon. A. H. Garland, United States Attorney General.

SIR:—I have the honor to inclose herewith copies of two reports from the Commissioner of the General Land Office, to wit: of February 24th and May 13, 1886, relative to the application of certain residents of Butte City, Montana, for the institution by the United States of a suit to set aside the patent issued March 15, 1881, to David N. Upton et al. for the "Smoke House Lode" mining claim, which was referred to this department by your letter of November 25, 1885. Transmitted with the said report are the papers accompanying your said letter, and also certain affidavits, etc., filed in this department since its reception here.

The application is based on the charge that said patent was procured wrongfully, in that the proofs, upon which it issued, falsely and fraudulently represented that the land was valuable for minerals, that the requisite \$500 worth of work had not been done upon it, and that the claim had not been staked off as required by the statute. The allegation of the want of necessary marking, work, and discovery of valuable minerals, are more or less amply supported by the affidavits of a number of reputable citizens of Butte City, who have been familiar with the Smoke House Lode for many years. But, in the view I take of the case, it is unnecessary for me to determine whether the *prima facie* thus made is sufficiently strong, and this for the following reason:

The papers before me show that the Smoke House Lode is situated entirely within the limits of the townsite of Butte, for which patent issued on September 26, 1877. The lode location was made in 1875, but the application was not made until January, 1880, and patent did not issue thereon until 1881, as aforesaid. While the application was pending, to wit: in April, 1880, protests were filed by the Mayor of Butte City, and others, alleging various causes (and among others the worthlessness of the land for minerals) why patent should not issue. The protests, however, abandoned the charge that the land was non-mineral, and as the final proofs were complete, and no adverse claim had been filed, the patent was in due time issued.

Subsequently, actions in the nature of ejectments were brought by the owners of the Smoke House Lode patent against various persons in possession of parts of said lode under the townsite patent, and the Supreme Court of Montana, at their January, 1886, term, affirmed the judgment rendered below for the plaintiffs. In respect to the required location, discovery, work, etc., they ruled, as will fully appear in a certified copy of their opinion forwarded herewith, that "the issuance of the (mineral) patent conclusively proves all these precedent acts and facts, which the Land Department must find to exist before patent can rightfully issue;" and they therefore held that evidence to prove the non-existence of these acts and facts was incompetent in the action then under consideration. In my judgment, this ruling is a correct exposition of the law. It was because of it, as it appears, that the parties claiming under the townsite patent have asked the intervention of the Government to have the mineral patent set aside.

If the land covered by the Smoke House Lode location was known to be valuable for minerals, then no title to it passed under the townsite patent; Deffenback vs. Hawke (115 U. S. 392). Hence when it was alleged to be valuable mineral land by the lode locators, and the required evidence there of had been filed with their application for patent before the local land office, it was incumbent upon the townsite claimants, if they pro-

posed to assert title under their patent, to file the adverse claim provided by the statute, and in the ensuing judicial proceedings to show the superiority of their right to it. Having had serious doubts at least, of the mineral character of the land at the time of the application for patent, as shown by the papers before me, and having failed to file the adverse claim authorized by law they certainly were neglectful of their own interests.

Furthermore, they had in their power to enter protest against the issue of the patent for any of the causes now set up as grounds for asking its cancellation, and in fact they did protest on several grounds. As to the alleged defects in staking and the amount of work done, a protest by them would merely have had the effect of delaying the issue of patent until such defects were cured. As to the non-mineral character of the land, proof of it would have barred the issue of a patent; but they withdrew or failed to prosecute the charge that no discovery of mineral had been made, because, as the papers before me indicate, they hoped that a discovery would be made; and herein again they were negligent in protecting their interests in the land.

Since the tract in controversy is covered by the townsite patent, if the mineral patent were set aside for the causes alleged, would re-vest in the holders under the townsite patent, and not in the United States. In the case of United States vs. Minor, (114 U. S. 223) the court said that it might become a grave question whether the government could be permitted to use its name to set aside its own patent for the benefit of a rival claimant, when it had no interest in the subject matter of the suit. In the case of United States vs. Hughes (11 Howard 552, 668) where it was urged that the United States had no interest in the land in controversy, it was held that such a suit might be instituted when, by reason of the inadvertence of the Land Department and the fraud of the claimant, the Government was unable to fulfill its engagements and give title to the prior and rightful claimant. But in this case there is no indication that the prior claimant had been negligent in acquiring or maintaining his rights; whereas, in the case before me, such negligence is manifest; and I think that, for that reason, the claimants under the townsite patent are in no position to ask the Government to interpose in their behalf. Having neglected to avail themselves of the two methods of preventing issue of patent authorized by the statute, they ought not now, I think, to be heard when they ask the use of the name of the Government to avoid the effect of such negligence.

For the foregoing reasons, it is my judgment that the petition should be denied, and I so recommend.

Very Respectfully,
L. Q. C. LAMAR,
Secretary.

In the case of the Mountain Maid patent, Attorney General Garland has given his opinion that the Mountain Maid patent is a valid title, and has authorized proceedings to be taken to vacate and annul the same on the ground that there was a valid protest pending against the same, undisposed of at the date of the issuance of said mineral patent, and that the same could not therefore rightfully issue until such protest was disposed of. An appeal will be taken, we understand, to the Supreme Court of the United States, in the Mountain Maid case.

Last evening a lawn party was given at the residence of J. P. McAllister to the children of the Episcopal Sunday-school, which was decidedly a pleasant affair.

Nine carriage loads of picnickers left Tombstone Thursday morning for Cochise Stronghold, to spend the day in rural enjoyment. A beautiful location was selected about half a mile above the Tweed house, and camp was pitched beside a running stream beneath the large oaks. But a short distance away were caves in the rocks, which were ornamented with Indian hieroglyphics. The day was delightfully spent in examining them, in discussing the refreshments, in games, target practice, etc. All voted the affair a great success, which was mainly due to the efforts of Mr. and Mrs. E. B. Gage, who spared no pains to make it so. A pleasant drive home by moonlight closed the day's pleasures, and not a single accident or unpleasant thing occurred to mar them.

The American Volunteer, both in war and peace, is a big chief.

Gregory's restaurant is neat and clean, and the table is excellent.

The Phoenix Herald is authority for the statement that Ben Goodrich has been appointed and has accepted the position of attorney for the Southern Pacific railroad. His province includes the section between Deming and Yuma.

A HIGH TRIBUTE.

A Texas gentleman, traveling in a Pullman palace car in Pennsylvania, happened to say that he was from the Lone Star State.

Do you live in the western portion of the State? asked a man opposite. I do. In Tom Green county? That's my county. Live near Carson? That's my town. Perhaps you know my brother William Henry Jones? Know him? Gimme your hand stranger. I helped hang William Henry last night before I left. He was a horse thief, but a good one.—Texas Siftings.

MINING MATTERS.

GROUND HOG MINING COMPANY.

Developments in the South End of the District and All Along the Line—Many New Locations Being Made.

The mining revival in Tombstone gives constant evidence of increased volume and permanency. Along the mineral belt, from the Silver Thread south to the Ground Hog, a distance of nearly five miles, there is more activity, and by far a greater number of men employed than have been seen in the past three years. A sure sign of the mining boom is shown in the County Recorder's office, where location notices are filed for record. Much vacant ground is being taken up, and many old prospects located in more prosperous times and allowed to lapse, have been relocated. The late strikes in the Silver Thread and North Point, which conclusively show that the mineral belt passes beneath the wash and lava beds to the northeast of the camp, have centered interest in that direction, and the result has been that many locations have been made in that section in the past two weeks, and some of the owners have started to work energetically. The EPITAPH will watch their developments with interest.

GROUND HOG.

The arrival in the camp this week of A. H. Heisey, of Pittsburg, a well-known capitalist and mining man, presages greater activity in the Ground Hog properties, which have long been considered among the best in the district. Mr. Heisey is president of the Ground Hog Mining Company, an Arizona corporation, which owns the Ground Hog, Ground Hog No. 2, Missouri and Side Line mines; besides this week the company bonded the Eden Lass, an adjoining claim, from T. F. Hudson and H. T. Fisher, the latter being superintendent of the company. The Ground Hog is developed by three shafts, the main shaft being 333 feet deep and the two others 200 respectively, at which level they are connected by drifts 740 feet in length. A fault in the vein between the 200 and 300 levels caused the company much uneasiness, but after 200 feet of crosscutting on the 300 level the slip has been located, and the mine never looked one-half as well as it does now. A winze from the second level, 95 feet from the main shaft, was started down on ore, and to-day a depth of 69 feet has been reached and nothing but ore can be seen on every side, and that of very good grade. Connection will be made soon as possible with the third level, 33 feet distant. A drift will be started at once into Eden Lass ground from the 200 level of the Ground Hog. The main shaft will be sunk to water level, estimated to be about 100 feet below present workings, and a fourth level started. When that is properly opened up the company will talk about reduction works, and not before. Such conservative methods go to prove that the company is controlled by clear-headed men, who know what legitimate mining means. The mine has already yielded \$24,000 in bullion for its fortunate owners, and besides has 1500 tons of ore on the dumps, all produced in the natural course of development. Little or no stoping has been done. It is evidently a milling proposition, and yet much lead ore has been extracted which averages 119 ounces silver and 38 per cent lead. The company is a close corporation; stock is not quoted, and none is for sale.

OMEGA.

About the first of August, M. J. Sullivan and Edward Koch, of Chicago, bought this property on a bond held by W. B. Benson, for the small sum of \$6,000. At that time the only development was an 80 foot shaft. Since then a force of men have been at work, and the results have proven more than satisfactory. The shaft was continued to a depth of 105 feet, a crosscut run to the hanging wall, 28 feet distant, all in ledge matter, and a winze has been sunk 20 feet in ore. In the past two days a much better grade of ore has been coming in, which some experts pronounce sand carbonate. Superintendent Benson considers it an important strike, and is consequently jubilant.

PONY EXPRESS.

Wm. Clancy, with others, has relocated the Excelsior mine under the name of Pony Express, and claims to have this week uncovered an eight foot ledge of quartz carrying horn silver. The property is situated northeast of town about a mile, and is on the strike of the Contention lode. Messrs. McClellan and Young also have good prospects in the vicinity.

LUCKY CUSS.

The new shaft is now down sixty feet in country rock. The fine ore body developed from the prospect shaft further west will be tapped at a depth of 250 feet. The Girard hoisting machinery which was recently removed to this mine is in good working condition.

The American yacht Volunteer won the first two heats this week in the great international race with the British yacht Thistle, for the America cup, in each case beating her competitor about two miles. As the Irishman says, we now "bate the wur-r-ruld" on sea and land.

The dead body of a teamster, killed by a pistol shot, was found this week at Sulphur Springs. The body has not been identified.

Gregory's restaurant will have a splendid Sunday dinner. Take your family there to-morrow.

LETTER LIST.

The following letters remain uncalled for in the post-office at Tombstone, Arizona, for the week ending October 1, 1887:

Blitche, C. Parsons, S. H.
Franklin, Lee Rolston, John T.
Framer, W. N. O. Teynib, Lemita
Higley, L. L. Vidano, Alessio
Miller, Frank Williams, Thos

Any person calling for any of the above letters will please say "advertised" and give the date.

C. S. CLARK,
Postmaster.

NEW ADVERTISEMENTS.

Notice of Transmuted Homestead Proof.

(Homestead Application No. 213.)

UNITED STATES LAND OFFICE,
TUCSON, ARIZONA, Sept. 30, 1887.
Notice is hereby given that the following named settler has filed notice of his intention to make final proof in support of his claim, and that said proof will be made before the Register and Receiver of the U. S. land office at Tucson, Arizona, on the 10th day of November, 1887, viz: Simon Madrid of Tres Alamos, Arizona, for the W 1/4 of the N E 1/4 and E 1/4 NW 1/4 Sec 21, Twp 16 S R 20 E, Gila and Salt River meridians.

He names the following witnesses to prove his continuous residence upon, and cultivation of said land, viz: Romaldo Torres, Pablo Horcasitas, Miguel Rosas, Felix Ruiz, all of Tres Alamos, Arizona.

A. D. DUFF, Register.

Notice of Homestead Proof.

(Homestead Application No. 175.)

UNITED STATES LAND OFFICE,
TUCSON, ARIZONA, Sept. 29, 1887.
Notice is hereby given that the following named settler has filed notice of his intention to make final proof in support of his claim, and that said proof will be made before the Register and Receiver of the U. S. land office at Tucson, Arizona, on the 22nd day of November, 1887, viz: Jesus Dias, of Tres Alamos, A. T., for the W 1/4 and N E 1/4 of SW 1/4 and SW 1/4 of N W 1/4 Sec 32 Twp 15 S R 20 E.

He names the following witnesses to prove his continuous residence upon, and cultivation of said land, viz: Antonio Gijalva, J. D. Allen, Antonio Conadern, Roman Pacheco, all of Benson, Arizona.

A. D. DUFF, Register.

PIONEER LIVERY STABLE



HARE & PAGE, Proprietors

Allen Street, above Occidental Hotel.

The best saddle horses and driving rigs in the city. Particular attention paid to outfits for long trips.

Marks & Wittig's Tonsorial Palace.

OCCIDENTAL HOTEL.

Hair-cutting, Shaving, Shampooing in the highest style of the art.

NOTICE!

To the Taxpayers of Cochise County, Arizona Territory.

The duplicate assessment roll of the County of Cochise, for the year 1887, is now in my possession for the collection of taxes levied therein.

Taxes will be delinquent on the third Monday of December, 1887, and unless paid on that day or prior thereto, five per cent will be added to the amount thereof as penalty.

Said taxes will be received at the Tax Collector's Office in the City of Tombstone, during the above time.

A. J. RITTER,
Treasurer and Ex-Officio Tax Collector, for Cochise County, Arizona Territory.



Brown—"You seem to be very good natured, Smith; what has happened?"
Smith—"I have been sending away for boots and shoes for years, and I find I can buy a better article for less money of J. M. Leary, right here at home. His store is on Allen street, between Fifth and Sixth, north side. Give him a call and make yourself happy as well."

Cochise Hardware and Trading Co.,

Wholesale and Retail Dealers in

General Merchandise,

Staple and Fancy Groceries.

Clothing, Boots and Shoes,
Flour, Grain and Hay,
Iron and Steel, Shelf
and Heavy Hardware,
Agricultural Implements.

MINING AND RANCH SUPPLIES, ETC.,

Allen Street, Between Third and Fourth.

By buying goods for Cash in Carload lots and taking advantage of Discounts in Eastern and Western markets, we are enabled to give our customers the benefit of the VERY LOWEST PRICES.

Agents for Studebaker Wagons and Safety Nitro Powder.

H. J. PETO, CHEMIST and DRUGGIST,

504 ALLEN STREET.

Has Always on hand a Large Stock of
Pure Drugs and Chemicals,
Homeopathic Medicines.

Assayers Materials. Household Receipts Promptly and Carefully Filled. Particular Attention Given to Compounding Prescriptions Day and Night.

Quarantine Proclamation

TERRITORY OF ARIZONA,
EXECUTIVE DEPARTMENT,
OFFICE OF THE GOVERNOR.

Whereas, the Live Stock Sanitary Commission of the Territory have officially certified that they have reason to believe that conditions have existed and continue to exist which render animals of the bovine species from the continent of Europe and the Republic of Mexico liable to convey disease, and request a quarantine to be established against said localities.

Now, therefore, I, C. Meyer Zulick, Governor of the Territory of Arizona, by virtue of the authority of law in me vested, do hereby order, establish and declare a Quarantine, to take effect immediately, against the Continent of Europe and the Republic of Mexico, on all bovine cattle from said localities coming into the Territory of Arizona, unless they are quarantined at the ports of entry prescribed by the Rules and Regulations of the Live Stock Sanitary Commission of Arizona, for a period of NINETY DAYS, and retained there until they shall receive a certificate of health signed by the Veterinary Surgeon of the Territory of Arizona, or some duly authorized deputy under him.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the Territory to be hereto affixed.
Done at Prescott, the Capital, this Eighteenth day of August, A. D. 1887.
C. MEYER ZULICK.

By the Governor:
JAS. A. BAYARD,
Secretary of the Territory.

Harris the Tailor

Has just received a full line of foreign and domestic Cassimers, suitable for fall and winter suits. He guarantees to please his customers as to style, price and quality. Under the Occidental Hotel, Allen street. Give him a call.

G. R. WATT. C. B. TARBELL.

Watt & Tarbell, UNDERTAKERS

No. 418 Allen Street.

(Next door to Hare & Page's Livery Stable.)

UNDERTAKING AND EMBALMING

In all its Branches. Preparing and Removing bodies promptly attended to.

Orders filled on short notice from any part of the County. Night orders can be left at Hare & Page's Livery Stable.

GREGORY'S RESTAURANT.

316 Allen Street, Opposite the U. K. Corral.

REGULAR MEALS 50 CTS.

PRIVATE DINNERS A SPECIALTY.

ELITE RESTAURANT

FRED PARKER, Proprietor.

Allen Street, near Fifth.

The Table is Constantly Supplied With the Very Best the Market Affords.

Polite and Attentive Waiters will Attend to your Orders.

Meals Cooked to Order at all Hours Day and Night.

FRESH FISH and GAME A SPECIALTY.

WILLOWS SALOON

ALLEN ST., BETWEEN FOURTH AND FIFTH.

Keeps Constantly on Hand the Choicest Brands of

Imported Wines, Liquors and CIGARS,
Rippy Bourbon and Atherton Rye Whiskeys.

Private Club Rooms

All kinds of Fancy Mixed Drinks a Specialty.

Gentlemanly Treatment Extended to all. Drop in and be Convinced.

AUCTION SALE

Every Night at

Colonel Dean's Auction and Commission House.

All kinds of Second-hand Furniture, Stoves, Fixtures, etc. bought and sold. Highest Cash prices paid.

Allen Street, between Fifth and Sixth. Old Cadwell Building.

PIONEER MEAT MARKET

Fourth Street, Between Allen and Fremont.

All kinds of First-class Meats at the Following

Reduced Prices:

BEEF—By the side or quarter 5 cents per pound.

VEAL—5 cents per pound.

MUTTON—By the carcass 8 cents per pound.

PORK—By the side 10 cents per pound.

Meats Retailled over the Block at Reduced Rates.

I do my own killing, and raise and fatten my own cattle, sheep and hogs, and in consequence can furnish Meats Cheaper and better than any other market in the city.

A. BAUER, Proprietor.

Great Reduction

— AT —

BARROW'S Auction House.

I have marked down prices on all lines of goods and will not be undersold by any house in the Territory. Call and examine prices, and you will be surprised. My stock, which is well selected, consists in part of Furniture, Carpets, Hats, Caps, Boots and Shoes, Crockery, Glassware, Tinware, Harness, Tents, Wagon Covers, Wall Paper, Guns and Ammunition.

SAM M. BARROW,

Allen St., Between Fourth & Fifth.

\$500 REWARD.

The undersigned hereby offer Five Hundred Dollars for the arrest and conviction of the person or persons who brutally murdered Nicholas McCormick on August 25th, 1887, about three miles from Bisbee.

COPPER QUEEN CON. MINING CO.